

**Supreme Court's Advisory Committee  
on the Rules of Criminal Procedure**

**MEETING MINUTES**

WebEx Video Conferencing  
November 17, 2020 – 12:30 p.m. to 2 p.m.

**APPROVED**

<b>MEMBERS:</b>	<b>PRESENT</b>	<b>EXCUSED</b>	<b>GUESTS:</b>
Douglas Thompson, <i>Chair</i>	•		Representative Steve Waldrip
Judge Patrick Corum	•		Jacqueline Carlton
Jeffrey S. Gray	•		Tyson Skeen
Judge Elizabeth Hruby- Mills	•		Michael Dreschel
Blake Hills	•		Matt Slawson
Craig Johnson	•		Chris Williams
Joanna Landau	•		<b>STAFF:</b>
Keri Sargent	•		Brent Johnson
Judge Kelly Schaeffer- Bullock		•	Minhvan Brimhall
Ryan Stack	•		
Cara Tangaro	•		
Matthew Tokson		•	

**1. Welcome and approval of minutes:**

Brent Johnson welcomed committee members to the meeting. The Committee considered the September 15, 2020 minutes. There being no changes to the minutes, Craig Johnson moved to approve the minutes. No second was taken and no objection was received on the motion. The motion was unanimously approved.

**2. State toxicologists testifying remotely:**

Representative Steve Waldrip was welcomed to the meeting. Representative Waldrip explained that State toxicologists express frustration about being subpoenaed to testify at a hearing, only to be told the hearing is rescheduled and their appearance is no longer needed that day. The state toxicology lab is understaffed and many of the hearings to which they are subpoenaed to testify require several hours of travel. The time away from the lab takes away FTE hours to complete the work that is needed and is not a

good use of state resources. Representative Waldrip and the state toxicology lab would like a rule amendment to rule 17.5 of the Utah Rules of Criminal Procedure to allow state toxicologists to testify remotely.

The committee agreed that cutting back on wasted resources is necessary to ensure that staff time is being utilized in the most appropriate manner. The committee discussed varying factors to a rule change that might impact both defense and prosecution with having a toxicologist testifying remotely. The committee discussed that if the defense and prosecution were able to come to an agreement prior to a hearing, and the toxicology report is made available to both parties prior to the hearing, a rule amendment may be possible. The committee also considered the impact such a rule amendment would have on the victim and witness testimony.

Michael Drechsel noted a conversation he had with Representative Paul Ray of the Legislative's Social Services Subcommittee. Representative Ray brought up the same issues regarding the use of toxicology lab resources. Mr. Drechsel researched the same type of work being done in other states and noted that some have created a procedural rule designed around notice and demand for the parties to notify each other their intent to use some sort of report, or perhaps remote testimony, and then rely on the opposing party to make a demand. If the demand is made, the person would actually attend in person. Mr. Drechsel noted this may be a way to spare some of the unnecessary resources by the state toxicology lab. Mr. Drechsel is unaware of any specific standards to this type of approach.

Following additional discussions, that committee agreed that Mr. Johnson, Jeff Gray, Judge Corum, Cara Tangaro, and Tyson Skeen will meet to discuss a potential amendment to rule 17.5 and put together draft proposal to the rule. The proposed amendments will be presented at a future meeting.

**3. Rules 8 and 11:**

Joanna Landau is working on amendments to rule 8 to address appointment of counsel. Ms. Landau recommends a subcommittee be created to assist in the discussion and drafting of amendments to the rule. Judge Corum, Judge Shaeffer-Bullock, Judge Brendan McCullagh, and Mr. Johnson will join Ms. Landau and Mr. Thompson on the subcommittee. Mr. Thompson will arrange for a meeting. The committee will provide an update at a future meeting.

With no further discussion, Judge Corum moved to create a subcommittee for rule 8. No second was taken or objection was received. The motion passed unanimously.

**4. Rule 9:**

Due to lack of time, this item will be reviewed at another meeting.

**5. Pleasant Grove City v. Terry:**

Due to lack of time, this item will be reviewed at another meeting.

**6. Rules 7 and 7A:**

Due to lack of time, this item will be reviewed at another meeting.

**7. Rules 17.5 and 18:**

Mr. Thompson was contacted by the clerk for Justice Deno Himonas regarding potential emergency amendments to rules 17.5 and 18 for the jury pilot program that will be happening in the Third District. Any changes made to the rule or the administrative order will need to be made by the end of the month, and may need to be done without recommendations from this committee.

The committee discussed that making amendments to the rules might not be an appropriate route to address the needs of the pilot program at this time, and the committee would recommend that the court's authority to promulgate the administrative order is the more appropriate action.

Due to the number of members that needed to exit the meeting during the discussion, the committee lacked a quorum and a motion could not be made.

**8. Rule 16 subcommittee report:**

The rule 16 subcommittee met and made proposed changes to the rule. The committee reviewed those changes and made minor changes to the language for consistency throughout the rule. The committee removed all pronouns, changed "defense" to "defendant", and changed "prosecution" to "prosecutor".

The committee discussed at length the language in line 46 as it relates to the criminal record of the witness the prosecution intends to call at trial. The committee noted that a criminal record may not exist for the witness that is testifying. The committee made a minor language change in line 46 and created a new line 50 as (a)(5)(C). Line 50 now reads as "Upon order of the court, the criminal records, if any, of all persons whom the prosecutor intends to call as witnesses at trial."

Following further discussions, Ryan Stack moved to approved the amendments made to line 46, (a)(5)(A), and creation of line 50, (a)(5)(C), as well as all changes made to the rule as previously modified. Blake Hills seconded the motion. The motion passed unanimously.

**9. Rule 26/Expungement:**

Due to lack of time, this item will be reviewed at another meeting.

- 10. H.B. 206 update:**  
Due to lack of time, this item will be reviewed at another meeting.
- 11. Rule 12:**  
Due to lack of time, this item will be reviewed at another meeting.
- 12. URCP 5:**  
Due to lack of time, this item will be reviewed at another meeting.
- 13. Other business:**  
None
- 14. Adjourn:**  
With no other business, the meeting adjourned without a motion due to the lack of a quorum. The meeting adjourned at 2:40 p.m. Next meeting is January 19, 2021 at 12 p.m. via Webex.